Dissenting Views on H.R. 1664, a bill to amend the executive compensation provisions of the Emergency Economic Stabilization Act of 2008

H.R. 1664 amends the Emergency Economic Stabilization Act of 2008 (EESA) to prohibit any recipient of a `capital investment' by the Federal government under the Troubled Asset Relief Program (TARP) or the Housing and Economic Recovery Act of 2008 (HERA), including Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, from making any compensation payments that are `unreasonable or excessive,' and any bonus payment that is not `performance-based,' so long as such an investment is outstanding. The bill would prohibit any such payments to any executive or employee under any existing or future compensation arrangement. It gives the Secretary of the Treasury the authority, in consultation with the Chairperson of the TARP Congressional Oversight Panel and with the approval of the financial regulatory agencies that comprise the Federal Financial Institutions Examination Council (FFIEC), to define what constitutes `unreasonable or excessive' compensation and to establish `performance-based' measures for bonuses. In addition, the bill essentially repeals the so-called `Dodd amendment' contained in the economic stimulus bill, so that bonus restrictions imposed on TARP recipients apply regardless of the date on which the bonus agreement was entered into.

House Republicans strongly object to excessive compensation and bonuses paid to executives of firms that have received taxpayer dollars, particularly those, like the American International Group (AIG), that will almost certainly never be able to pay a large portion of that money back. The recent revelations that the Democratic administration and Democratic Congress inserted language in the stimulus bill insulating from legal challenge some $165 million in bonuses paid to executives at AIG, whose failure has cost taxpayers $173 billion, have provoked justifiable public outrage. H.R. 1664 is an effort to cover the Democratic Majority's tracks, and `change the subject' from the administration's failure to exercise adequate oversight of the taxpayer dollars expended to prop up AIG.

While many House Republicans did not support the establishment of the Troubled Asset Relief Program--and most voted to disapprove release of the second $350 billion tranche of the TARP funds--it is now Congress' responsibility to ensure that the program works as effectively as possible and that the taxpayers' investment is returned as quickly as possible. Unfortunately, this overly broad and punitive legislation will work at cross-purposes with that objective. The success of the taxpayer-subsidized public-private partnerships created by the Obama administration to purge toxic assets from banks' balance sheets hinges almost entirely on the willingness of the private sector to invest its capital alongside the government. As drafted, H.R. 1664's executive compensation restrictions would not extend to these private sector investors. However, the legislation does send an unmistakable message to financial institutions considering whether to enter into partnership with the government that Congress can and will change the rules of the game at any time. This will inevitably discourage participation in a program that the Obama administration has characterized as essential to stabilizing the financial system.

During consideration of H.R. 1664, the Committee adopted on a straight party-line vote an amendment offered by Rep. Brad Miller (D-NC) requiring the Secretary of the Treasury to consult with the Chair of the TARP Congressional Oversight Panel (COP) in determining what constitutes unreasonable or excessive compensation and performance-based compensation measures. Given its limited mandate, the Congressional Oversight Panel has no expertise on the issue of executive compensation, no expertise on the subject of corporate governance, and no formal legal standing even to issue recommendations on policy questions. As its name might indicate, the Congressional Oversight Panel is strictly an oversight panel, and it was never intended nor is it authorized to set policy. Even overlooking the statutory limitations on the Panel from the EESA, the fact remains that the Congressional Oversight Panel has not conducted a single public hearing on compensation that might have given it any particular insight on the subject. Moreover, the Miller Amendment poses a clear conflict of interest for the Congressional Oversight Panel. By requiring the Chair of the Panel to have a consultative role with the Secretary on TARP decisions related to compensation, the line between decision makers and oversight authorities will be impossibly blurred, potentially calling into question the reliability of any future oversight work the Panel might ultimately conduct on executive compensation matters.

The easy solution throughout the recent period of financial turmoil has been to hand the taxpayer the bill for rescuing `too big to fail' financial institutions without evaluating the long-term consequences. Rather than projecting the Federal government further and further into the private economy, we should, instead, formalize and execute a responsible exit strategy that ensures taxpayers are repaid. The best approach to protecting the taxpayers' investment in private business is through stronger oversight and accountability, not by further entrenching government in the operations and management of hundreds of businesses across America, many of which are community and regional banks that did nothing to create the current crisis. Indeed, given the government's track record in piling up huge deficits and mismanaging a wide range of Federal programs, there is little reason to believe that it will have any more success in running private enterprises.

Spencer Bachus.

Randy Neugebauer.

Donald Manzullo.

Peter King.

Scott Garrett.

Bill Posey.

Christopher Lee.